

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MIKECAL GRAIKA)	
Claimant)	
VS.)	
)	Docket No. 1,003,284
OTTAWA TRUCK CORPORATION)	
Respondent)	
AND)	
)	
CONTINENTAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals Administrative Law Judge Julie A.N. Samples' June 20, 2002, preliminary hearing Order.

ISSUES

The Administrative Law Judge (ALJ) denied claimant's request for temporary total disability benefits and medical treatment. Claimant alleged he injured his right knee and back while performing heavy repetitive work activities for respondent from January 1, 2001, through January 18, 2002, the last day claimant worked for respondent. The ALJ found claimant's description of his work activities may well have aggravated preexisting degenerative conditions in his right knee and low back. But the ALJ went on to find that claimant failed to prove he gave timely notice of a work-related accident as required by K.S.A. 44-520.

On appeal, claimant contends he satisfied the timely notice requirement contained in K.S.A. 44-520 by telling two of his supervisors that his back was hurting, obtaining pain medication from respondent's medicine cabinet, and limping while he was working. Claimant also argues he had just cause for not giving respondent the 10 day notice which extended the notice period to 75 days.

In contrast, respondent requests the Appeals Board (Board) to affirm the ALJ's preliminary hearing Order that denied claimant's request for preliminary hearing benefits because he failed to satisfy the requirements of the timely notice statute.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Board makes the following findings and conclusions:

The Board finds the ALJ's preliminary hearing Order that found claimant failed to prove he satisfied the timely notice of accident requirements as required by K.S.A. 44-520 should be affirmed.

The Board also agrees with the ALJ's findings and conclusions as set forth in the preliminary hearing Order. It is not necessary to repeat those findings and conclusions in this Order. Therefore, the Board adopts those findings and conclusions as its own as if specifically set forth herein. In particular, the Board finds claimant failed to give respondent notice of a work-related accident within 10 days of the accident and claimant failed to prove respondent's authorized representatives had actual notice of a work-related accident. Additionally, the Board finds that, although claimant proved he gave respondent notice of accident on March 7, 2002, which was within 75 days of the last day he worked, claimant failed to prove just cause for not giving respondent notice of accident within 10 days.

As provided by the act, preliminary hearing findings are not binding but subject to modification on a full hearing on the claim.¹

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Julie A.N. Samples' June 20, 2002, preliminary hearing Order, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 2002.

BOARD MEMBER

c: John J. Bryan, Attorney for Claimant
Steven Quinn, Attorney for Respondent
Julie A.N. Sample, Administrative Law Judge
Director, Division of Workers Compensation

¹ See K.S.A. 44-534a(a)(2).